

Federal Court



Cour fédérale

Date: 20191001

Docket: IMM-5941-18

Citation: 2019 FC 1246

Ottawa, Ontario, October 1, 2019

PRESENT: Mr. Justice Pentney

BETWEEN:

**OLUGBENGA REMI OLADIHINDE
KAFAYAT OMOBOLAJI KAREEM**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGEMENT AND REASONS

[1] The applicants seek judicial review of the Immigration Officer's decision to refuse Mr. Oladehinde's demand for permanent residence.

[2] Mr. Oladehinde and Ms. Kareem were married on December 18, 2015, in Nigeria. Ms. Kareem came to Canada and sought refugee protection on June 20, 2016. Her refugee claim was accepted, and she then filed her application for permanent residence as a member of the protected class. She listed Mr. Oladehinde as her spouse on that form.

[3] The officer denied Mr. Oladehinde's application following a request for more information as well as a procedural fairness letter, on the basis that the applicants had not met their burden to satisfy the officer that the marriage was genuine and was not entered into for the purpose of obtaining immigration status. The key portion of the officer's notes explaining the decision state:

[R]eviewed Evidence of chats and telephone calls; it would appear at times applicant refers to In-Canada [Ms. Kareem] as Madam – seems a rather formal way to address a spouse; evidence of communication is low quality and viewed as communication between casual friends. Some evidence of photos taken together – appear to be posing. Based on a review of file and contents, I am not satisfied applicant and In-Canada applicant are in an ongoing genuine spousal relationship. There is little on file to satisfy me applicant and In-Canada applicant were in a genuine relationship prior to getting married in the year 2015 (a few months after In-Canada applicant was issued a TRV [Temporary Resident Visa]; there is little to confirm applicant and In-Canada applicant lived together in a common law relationship prior to getting married. I am satisfied marriage was entered into to gain access into Canada. I am not satisfied the relationship is genuine. At best it appears applicant and In-Canada applicant are casual friends.

[4] The Applicants submit that the officer erred in two fundamental ways: (i) the officer did not specify in the procedural fairness letter the basis for the concern about the marriage, and thus they did not know “the case to meet”, breaching procedural fairness: and (ii) the officer's assessment of the evidence submitted to demonstrate the genuineness of the marriage was unreasonable.

[5] The standard of review in regard to procedural fairness most closely aligns with the “correctness” standard, but in reality what a reviewing court must do is to determine whether the process was fair, having regard to all of the circumstances: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, at para 54, [2019] 1 FCR 121. The reasonableness

standard applies to the officer's assessment of the evidence: *Gangurean v Canada (Citizenship and Immigration)*, 2012 FC 286, at para 9. The reasonableness of the decision is to be assessed considering both the decision letter and the officer's notes in the electronic Global Case Management System [GCMS]; these notes form an integral part of the decision: *Pathak v Canada (Citizenship and Immigration)*, 2014 FC 216; *Gebrewldi v Canada (Citizenship and Immigration)*, 2017 FC 621, at para 29.

[6] The applicants' first argument is that the officer's procedural fairness letter was not adequate. The GCMS notes indicate that the officer had concerns about whether the applicants were in a genuine ongoing relationship early on in the consideration of the application. The context for this concern arises from the following background facts.

[7] Ms. Kareem obtained a Temporary Resident Visa [TRV] on September 25, 2015. She said it was arranged by family members because she had intended to accompany her grandmother on a visit to Canada. In the end, the visit did not happen. When the TRV application was submitted, Ms. Kareem was in a long-term common law relationship with another man, which she declared on her application for the visa. Shortly thereafter, that relationship ended and Ms. Kareem began her relationship with Mr. Oladehinde. She moved into Mr. Oladehinde's apartment in June 2015, and they married in December of that year. In June 2016, Ms. Kareem had to flee Nigeria for reasons unrelated to her marriage, and she came to Canada using the temporary resident visa she had previously obtained. The same month, she claimed refugee status, which was subsequently granted. On her claim for refugee status, Ms. Kareem indicated that she was married to Mr. Oladehinde, and she submitted a Nigerian Certificate of Marriage in support.

[8] The officer noted that there was “little else to confirm a genuine ongoing relationship”. Further information was provided by the applicants, but the officer’s concerns about the genuineness of the marriage remained. On August 22, 2018, the officer sent a procedural fairness letter to Mr. Oladehinde, which stated the following:

Based on information available to me, I have concern that your marriage to Kafayat Omobolaji Kareem is not genuine and was entered into primarily for the purpose of acquiring permanent residence in Canada. The documentation you have provided on your application does not support a genuine, ongoing marital relationship and I intend to refuse the application.

[9] The letter stated that the applicant had thirty (30) days to provide further information. In response to this letter, Ms. Kareem submitted a letter together with pictures, copies of text messages as well as records of phone and video conversations between herself and Mr. Oladehinde. She explained that since they used “WhatsApp” to communicate, she could only provide proof of their interactions over the ten days prior to her letter because her phone did not keep records beyond that date. The officer reviewed this material and concluded that the applicants had not provided sufficient information to respond to the concern about the relationship. The application was refused on that basis.

[10] The claim of a denial of procedural fairness arises because the GCMS notes show that the officer had observed that Ms. Kareem had indicated that she was in a common law relationship with another man when she applied for her TRV. That visa was issued in September 2015, and she used it to gain entry Canada, and then she claimed refugee status June 2016. In the documents submitted in support of her refugee claim, Ms. Kareem listed Mr. Oladehinde as her husband. The applicants argue that the officer should have specified this concern about the TRV in the procedural fairness letter, rather than simply referring to a general concern about the

genuineness of the marriage. The officer's failure to mention this specific concern denied the applicants the opportunity to respond to it, and this was unfair in the circumstances.

[11] I am not persuaded. The officer's concern related to whether the marriage was genuine, or whether it was entered into for the purposes of obtaining immigration status, contrary to subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. This was clearly expressed in the procedural fairness letter. The reference to a prior long-term common law marriage in the TRV application of Ms. Kareem was both of recent vintage and known to Ms. Kareem. Her letter in response to the procedural fairness letter addresses the history of the development of her relationship with Mr. Oladehinde, including the termination of her previous relationship. She was not taken by surprise, or unaware of the factual basis of the officer's concern.

[12] Moreover, I find that the notes demonstrate that the officer was not solely concerned about the reference to another relationship in the TRV. The officer's notes point to a more general concern regarding the evidence about the relationship. In the circumstances, I do not find that it was unfair for the officer to omit a specific reference to the visa application. The concerns about the evidence of a genuine ongoing relationship were stated clearly, and fairness demanded no more of the officer in the circumstances: *Charara v Canada (Citizenship and Immigration)*, 2016 FC 1176, at para 27.

[13] The applicants' second argument is that the officer's assessment of the evidence is unreasonable, because the officer ignored several key facts:

- that Ms. Kareem had fled Nigeria shortly after her marriage, and had made a refugee claim in Canada which was accepted;

- that the photos submitted in response to the procedural fairness letter were clearly explained, and showed that their relationship was public and that their families were aware of it;
- that the officer notes the occasional references to the use of the term “madam” in the text messages, and finds that it is a “formal way to address a spouse,” but the officer ignores the multiple references in the text messages to the term “Ife Me,” which means “my love” in the language of the couple.

The applicants argue that the decision is unreasonable because too much relevant evidence was ignored.

[14] The respondent submits that the officer clearly took all of the evidence into account, as is demonstrated by the specific references to the photographs and the words used in the text messages. The onus is on the applicants to provide sufficient evidence to convince the officer that the marriage was genuine. This is an inherently factual and context-specific inquiry which lies within the expertise of the officer. It is not necessary for the officer to recite every piece of evidence in the record, as long as the analysis is transparent and reasonable in view of the facts and the law: *Onwubolu v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 19 at paras 18-22; *Chen v Canada (Citizenship and Immigration)*, 2018 FC 840 at paras 18-21.

[15] While I would not endorse all of the comments made by the officer in regard to the evidence, that does not, in itself, render the decision unreasonable. The key question in a judicial review on the standard of reasonableness is summarized in *Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 [2016] 2 SCR 80:

[18] Reasonableness review is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome. The reasoning must exhibit “justification, transparency and intelligibility within the decision-making process”: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47. The substantive outcome and the reasons, considered together, must serve the purpose of

showing whether the result falls within a range of possible outcomes: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14. While the adequacy of a tribunal's reasons is not on its own a discrete basis for judicial review, the reasons should "adequately explain the bases of [the] decision": *Newfoundland Nurses*, at para. 18, quoting from *Canada Post Corp. v. Public Service Alliance of Canada*, 2010 FCA 56, [2011] 2 F.C.R. 221, at para. 163 (per Evans J.A., dissenting), rev'd 2011 SCC 57, [2011] 3 S.C.R. 572.

[16] To put it another way, on judicial review on the deferential standard of reasonableness, a key concern is whether the process and decision indicate that the decision-maker truly "engaged" with the evidence, applying the appropriate legal test. The standard is not perfection. It must be recalled that Parliament assigned the task of conducting the initial inquiry into the facts to the officer. Deference is due to a decision-maker in particular in a context where the inquiry is primarily factual, and it is within the decision-maker's area of expertise, in a situation where greater exposure to the nuances of evidence or a greater awareness of the policy context may provide an advantage. If the chain of reasoning of the decision-maker can be understood, and if it shows that this type of engagement occurred, the decision will generally be found to be reasonable: see *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431.

[17] In the case before me, I am able to follow the reasoning of the officer; the notes and decision indicate that the officer did engage with the relevant evidence and was guided by the relevant law. That is all that reasonableness requires. It is not for a judge on judicial review to overturn a decision simply because another assessment of the evidence was possible, or another result could have been reached. The task of assessing the evidence at first instance was assigned to the officer by Parliament, and the Court's approach to the task of reviewing the decision must not lose sight of that fact.

[18] I have some sympathy for the arguments advanced by the applicants, and I can understand why they believe that the decision-maker could have reached a different conclusion. On the law and the evidence as set out above, however, I am unable to find that the decision is unreasonable.

[19] The application for judicial review is dismissed. There is no question of general importance for certification.

JUDGMENT in IMM-5941-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5941-18

STYLE OF CAUSE: OLUGBENGA REMI OLADIHINDE, KAFAYAT
OMOBOLAJI KAREEM v MINISTER OF CITIZENSHIP
AND IMMIGRATION

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